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E-filed June 4, 2013

6 UNITED STATES BANKRUPTCY COURT
7 DISTRICT OF NEVADA

8
9 In re:

)
)
Case No: BK-N-13-50194-btb
10 PATRICK and PATRICIA
11 McCauley,
12 Debtors) Chapter 12

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**CHAPTER 12 PLAN, VALUATION
MOTION, MOTION TO ESTIMATE
DAMBACHER CLAIM, AND MO-
TION TO CONFIRM.**

13)
14)
15)
/ Hearing Date: Pending
Hearing Time: Pending
Estimated time for hearing: 2 hours

16 Debtors submit the following Chapter 12 Plan pursuant to § 1221 of the Bankruptcy
17 Code and request that their assets be valued and the claims against them be estimated
18 to facilitate consideration thereof:

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1 Plan

This Plan shall be for a period of five (5) years from the first payment made hereunder, being the Plan period. Debtors shall, during the period of this Plan, submit all or such portion of its future earnings or other future income to the supervision and control of the Chapter 12 Trustee ("Trustee") as is necessary for the execution of the Plan.

1.1 Classification of Claims

Claims shall be divided into three secured classes, one priority class, one unsecured class and one class of interests. Each claim or interest within a particular class shall be treated the same unless the holder of a particular claim or interest agrees to less favorable treatment. Each secured claim is in its own class.

Plan classes are as follows:

1.1.1 Secured.

John J. Benner and Mary Alice Sandstrom, General Partnership is **Class 1(a)**. They have filed Claim No. 4-1 herein,

Milton M. Dambacher, Trustee of the Dambacher Family Trust dated 4/29/87, who asserts that his claim is partially supported by a judgment in case No. CV 52556, Superior Court of California, County of Tuolumne, CA, which judgment was recorded in the official records of Modoc County, CA, on March 19, 2007 as Doc-2007-0001220-00 is **Class 1(b)**. He has filed Claim No. 3-1 herein. The Class 1(b) claim is disputed in both its secured and unsecured parts.

Modoc County Tax Collector is **Class 1(c)**. It has filed Claim No. 2-1 herein,

1.1.2 Priority

The IRS is **Class 2**. It has filed Claim No. 2-1 herein,

1 **1.1.3 General Unsecured Claims.**

2 General Unsecured Claims are **Class 3.**

4 **1.1.4 Interests**

5 The ownership interests of Patrick and Patricia McCauley are **Class 4.**

7 **1.2 Treatment of Claims:**

9 **1.2.1 A. Secured Claims.**

10 Class 1(a)-Benner/Sandstrom Partnership. The Class 1(a) claim is allowed as a secured
 11 claim in the amount of \$343,198.43. This includes interest at the contract until the
 12 Effective Date of the Plan. This fully secured creditor will be paid by way of a new
 13 promissory note calling for annual installments over a 30 year period, payments to
 14 begin on August 1st, 2014¹. The note shall bear interest at the rate of four percent
 15 (4%) per annum from the Effective Date. The partnership shall retain its existing
 16 security and priority. Except as modified above, the note shall contain all existing
 17 terms. The note shall be marked paid and the Deed of Trust reconveyed once all plan
 18 payments due this creditor have been paid in full. The existing note shall be canceled
 19 on the Effective Date. Payments shall be made directly to John J. Benner and Mary
 20 Alice Sandstrom, General Partnership.

21 Class 1(b)-Dambacher Trust. The Class 1(b) secured claim is allowed as a secured
 22 claim in the amount of \$34,331.25. This claim is disputed and Debtors will promptly
 23 file an objection to thereto. Debtors will also amend their schedules to reflect that this
 24 claim is disputed in both its secured and unsecured form. The Allowed Amount of this
 25 claim will be paid by way of a new promissory note calling for annual installments
 26 over a 20 year period, payments to begin on August 1, 2014.². The note shall bear

27 ¹ See *In re Yett*, 306 BR 287 (9th Cir BAP 2004).

28 ² Ibid.

1 interest at four percent (4%) per annum from the Effective Date. The Dambacher Trust
 2 shall retain its existing security and priority. Except as modified above, the note shall
 3 contain standard terms prevalent in real estate notes in Modoc County, CA. Payments
 4 shall be made directly to the Chapter 12 Trustee.

5 Class 1(c)-Modoc County. The Class 1(c) claim is allowed as a secured claim in the
 6 amount of \$52,322.75, including with interest and penalties through the Petition Date
 7 as set forth therein. Modoc County's allowed secured claim shall bear interest at the
 8 rate of 4% APR from the Effective Date. This secured creditor shall retain its lien. It
 9 shall be paid in 10 equal annual installments, beginning on August 1, 2015. Payments
 10 shall be made to the Chapter 12 Trustee. Once it has been paid in full, the Modoc
 11 County Tax Assessor will void its lien.

12 **1.2.2 Priority Claims**

13 All claims entitled to priority under Section 507 of the Bankruptcy Code ("Section
 14 507"), shall be paid in full, in deferred cash payments, unless—the claim is a claim
 15 owed to a governmental unit that arises as a result of the pre-petition³ sale, transfer,
 16 exchange, or other disposition of any farm asset used in the Debtors's farming opera-
 17 tion, in which case, the claim shall be treated as an unsecured claim that is not entitled
 18 to priority under Section 507, but the debt shall be treated in such manner only if the
 19 Debtors receives a discharge; or the holder of a particular claim agrees to a different
 20 treatment of that claim.

21 Class 2 claims entitled to priority under Section 507 shall be paid in full in 60 equal
 22 monthly installments over the life of the Plan, the first payment being due the first
 23 day of the first full month following the Effective Date. Payments shall be made to the
 24 Chapter 12 Trustee. The only known priority creditor is the IRS (Claim No. 1-1 in
 25 the amount of \$6,647.24. Debtors believe that this claim results from the failure to file
 26 returns. Debtors estimate that their returns for 2008, 2009, 2010, 2011 and 2012 will

27 ³ See *Hall v U.S.*, 132 S. Ct. 1882 (2012).

1 be filed no later than July 1, 2013.

2

3 **1.2.3 General Unsecured Claims.**

4 Class 3. Allowed General Unsecured Claims shall paid in full by 60 equal monthly
 5 payments, beginning on the first day of the first month following the Effective Date of
 6 the Plan, provided all priority claims have then been paid in full and if not, 30 days
 7 after priority claims have been paid in full. Interest accruing after the date of filing
 8 shall be paid on Class 3 claims at the rate of three percent (3%) per annum only to
 9 the extent that the Debtors have disposable income to pay such interest after making
 10 provision for full payment of all allowed claims. Payments shall be made to the Chapter
 11 12 Trustee.

12 The Class 1(b) unsecured claim is completely disallowed and shall be zero. There
 13 are no known unsecured creditors, other than the disputed Class 1(b) claim.

14

15 **1.2.4 Interests.**

16 Class 4. The equity interest of Debtors is not impaired by the Plan.

17

18 **1.3 Feasibility**

19

20 Debtors' net income is sufficient to make all required plan payments. See Exhibit 1
 hereto⁴.

21

22 **1.4 Miscellaneous**

23

24 **1.4.1 Defaults Cured.**

25 All monetary defaults have been considered in the Plan. Except as otherwise provided
 26 above, all such defaults shall be deemed cured on confirmation of the Plan.

27

⁴ Page 1 of Exhibit 1 is the Payment Schedule; Page 2 of Exhibit 1 shows Cash Flow.

1 **1.4.2 Leases Assumed/Rejected**

2 All unexpired leases and executory contracts are rejected as of the Effective Date, in-
3 cluding but not limited to Debtors' April 14, 2011 lease of the McCauley ranch to Blake
4 and Stephanie Alexandre.

6 **1.4.3 Vesting**

7 All property of the estate shall vest in the Debtors on the Effective Date.
8

9 **1.4.4 5 year Plan**

10 Confirmation of this Plan shall constitute a finding that cause exists to extend Plan
11 payments over a period in excess of three years.
12

13 **1.4.5 Administrative Expenses**

14 Allowed administrative expenses, including statutory Trustee fees and attorney fees,
15 shall be paid in full in 5 equal payments over the 5 year life of the Plan, the first
16 payment being due the first day of the first full month following the Effective Date,
17 or upon any sale of the McCauley Ranch, whichever is earlier, provided however that
18 the Trustee shall not receive statutory fees on monies paid to the Benner/Sandstrom
19 Trust. Payments shall be made to the Chapter 12 Trustee.
20

21 **1.4.6 DIP Account and Monthly Reports.**

22 Following confirmation, Debtors shall file Monthly Operating Reports in a form ap-
23 proved by the Chapter 12 Trustee, no later than the 20th day of each month, begining
24 with the first full month following the Effective Date and continuing thereafter until
25 the end of the Plan term.
26

1 **1.4.7 Untimely Claims**

2 FAILURE OF CREDITOR(S) TO FILE A TIMELY WRITTEN OBJECTION TO THIS
3 PLAN PRIOR TO CONFIRMATION SHALL CONSTITUTE ACCEPTANCE OF THE
4 PLAN.

5 Subject to the provisions of §502, untimely claims are disallowed, without the need
6 for formal objection, unless allowed by court order.

8 **1.4.8 Modification of Plan**

9 This Plan may be altered post confirmation in a non-material manner by court order
10 after notice to the Debtors, the Trustee, any creditor whose claim is the subject of the
11 modification, and any interested party who has requested special notice. The Plan may
12 also be modified post-confirmation as provided in 11 USC §1229.

13 Any pre-confirmation modifications shall comply with 11 USC §1223.

15 **1.4.9 Effective date**

16 If confirmed, the Effective Date of this Plan shall be the 11th day following entry of
17 an Order of confirmation, unless there be a timely appeal, in which event the Effective
18 Date shall be the 11th day following the day when the entry of an Order affirming the
19 confirmation of this Plan becomes final and non-appealable.

20 WHEREFORE DEBTORS PRAY AS HEREINBELOW SET FORTH:

23 **2 VALUATION MOTION**

24 The Debtors move this honorable Court for an order fixing the fair market value of the
25 collateral, for purposes of confirmation and administration of this Plan, at the dollar
26 amounts provided below.

27 The Debtors' ranch ("McCauley Ranch"), being 308 acres of hay farm land and 80
28 acres of meadow grazing land at Cedarville, CA, being APN 033-050-44, has a fair mar-

1 ket value of One Million and Fifty Thousand dollars (\$1,050,000.00) on the Effective
 2 Date. Debtor will supplement this Motion with supporting evidence at least 20 days
 3 prior to the hearing.

4 Debtors' 100% ownership interest in GC Livestock, LLC, including its equipment
 5 and livestock, has a fair market value of Sixty Thousand Dollars (\$60,000). Debtor
 6 will supplement this Motion with supporting evidence at least 20 days prior to the the
 7 hearing.

8 Debtors' 2008 Dodge Pickup, has a fair market value of Twelve Thousand Dollars
 9 (\$12,000). Debtor will supplement this Motion with supporting evidence at least 20
 10 days prior to the the hearing.

11 WHEREFORE DEBTORS PRAY AS HEREINBELOW SET FORTH:

13 **3 MOTION TO ESTIMATE DAMBACHER CLAIMS**

15 Feasibility of this Plan is affected by what, in Debtors' opinion, are unwarrented se-
 16 cured and unsecured claims set forth in Claim 3-1, being the Dambacher Trust claim.
 17 The Dambacher claim totals \$465,320.26 and is, roughly, equally divided into secured
 18 and unsecured parts.

19 Debtors respectfully request that this Court estimate the secured portion of Claim
 20 3-1 to be in the amount of \$34,331.25 for purposes of Plan confirmation (feasibility)
 21 and the unsecured portion to be zero.

22 The Dambacher Trust's contested secured claim is for \$250,180.21 and is based on
 23 a March 3, 2007 judgment in Milton Dambacher's favor in the amount of \$157,261.90.
 24 The remainder of that secured claim is penalties and interest.

25 The Dambacher Trust contested unsecured claim is in the amount of \$215,140.05
 26 and is based on, even if the attachments to its claim are accepted, arguendo, as true,
 27 a maximum of \$74,632.50 in work allegedly done in 2009 to repair grading and other
 28 work Debtors had performed in 2007 and 2008 on the Dambacher's property in Merced,

1 California (commonly known as the Bellevue Ranch). The debtors performed this work
 2 in an attempt to "work off" the judgment. How it grew to \$215,140.05 is nowhere
 3 shown on the claim or the attachments thereto.

4 Debtors don't dispute that some of their work was defective but contend that the
 5 value of the work performed, defective or not, was greater than the amount of the
 6 judgment and that, if an exact accounting is done, it will show that instead of Debtors
 7 owing Dambachers the claimed \$465,320.26, the Debtors actually owe \$34,331.25.

8 Attached hereto as Exhibit 2 is an accounting overview of the work done by Debtors
 9 on the Dambacher's Bellevue Ranch following entry of the March 3, 2007 judgment.
 10 This work included grading the Bellevue Ranch, and also doing fencing, plumbing, elec-
 11 trical, remodeling, clean-up and the like, all of which increased the value of the Belle-
 12 vue Ranch. It does not include interest on the amounts due Debtors by Dambacher
 13 on monies unpaid. By reason of these improvements, Dambacher was able to raise its
 14 monthly rental of its Bellevue Ranch by over 120% (\$2,466.67 per month to \$5,500.00
 15 per month)⁵.

16 The said exhibit also shows the amounts due Dambacher by Debtors by reason
 17 of the judgment and for rent during the post-judgment time period. As with monies
 18 due Debtors by Dambacher, the exhibit does not include any interest on monies owed
 19 Dambacher by the Debtors.

20 All post-judgment transactions between Debtors and the Dambacher Trust were
 21 performed pursuant to an oral understanding. Excepting the \$34,331.25 referenced
 22 above, Debtors have completely paid the judgment and would have paid by "work-off"
 23 the remainder of the judgment had not Milton Dambacher's son changed the terms of
 24 this oral agreement so that they were no longer satisfactory to the Debtors.

25 WHEREFORE Debtors PRAY:

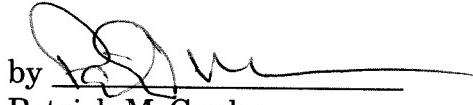
- 26 1. That the Plan be confirmed;
 27 2. That its property be valued as provided hereinabove;

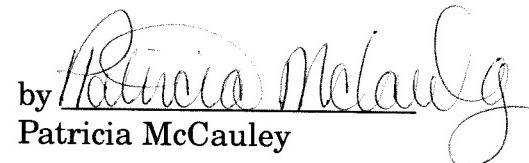
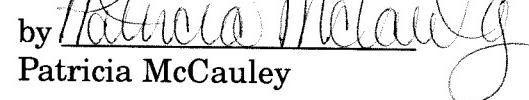
28 ⁵ Debtor Patrick McCauley intends to file a Declaration in support of these and additional related facts
 when counsel has had an opportunity to prepare it.

1 3. That the Dambacher Trust's secured claim be estimated to be in the amount of
2 \$34,331.25 for purposes of Plan confirmation, and that the Dambacher Trust's unse-
3 cured claim be estimated at zero for purposes of Plan confirmation.

4 4. For such other and further relief as is proper.

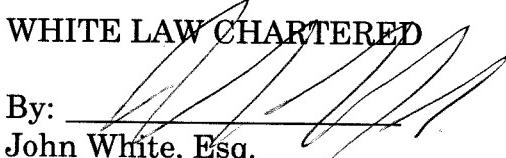
5 Dated June 4, 2013

6 
7 by 
8 Patrick McCauley

6 
7 by 
8 Patricia McCauley

9

10 Submitted by:

11 **WHITE LAW CHARTERED**


12 By: 
13 John White, Esq.
14 Proposed Counsel for the Debtors

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1 Index of Exhibits

Exhibit No.	Description	No. of Pages
1	Payment Schedule (p 1) and Cash flow (p 2)	2
2	Accounting overview of Bellevue Ranch improvements made by Debtors in payment of judgment	2

1 CERTIFICATE OF SERVICE
2

3 I hereby certify that on June 4, 2013, I served the foregoing document entitled
4 CHAPTER 12 PLAN, VALUATION MOTION, MOTION TO ESTIMATE DAMBACHER
5 CLAIM and MOTION TO CONFIRM, in the following manner:

- 6 a. Via the Court's ECF System on June 4, 2013 to:

7 Jan Johnson, Trustee jjohnson@ch12@jpj13trustee.com

8 CHRISTOPHER JAIME on behalf of Milton M. Dambacher, at cjaime@mclrenolaw.com

9 Rollin Thorley on behalf of the IRS at Rollin.G.Thorley@irs counsel.treas.gov

10 Nate Zeltzer, Esq. at nrzbk@yahoo.com

11 Michael R. Brooks, on behalf of John Benner and Mary Alice Sandstrom, jsal-
12 lade@brooksbauer.com

13 JOHN WHITE on behalf of Debtors Patrick and Patricia McCauley bankruptcy@whitelawc-
14 john@whitelawchartered.com;

15 b. By depositing for mailing a copy of the foregoing document on June 4, 2013
16 by First Class U.S. Mail, deposited at the U.S. Post Office to all parties-in-interest as
17 described in the attached mailing matrix. The undersigned further affirms that the
18 foregoing is true and correct to the best of my knowledge and that preceding document
19 does not contain the Social Security number of any person.

20 Dated: June 4, 2013.

21 
22
23

24 John White, an employee of White
25 Law Chartered
26
27
28

Label Matrix for local noticing

0978-3

Case 13-50194-btb

District of Nevada

Reno

Tue Jun 4 15:32:01 PDT 2013

INTERNAL REVENUE SERVICE

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PHILADELPHIA, PA 19101-7346

United States Bankruptcy Court

300 Booth Street

Reno, NV 89509-1360

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The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u) JOHN J. BENNER and MARY ALICE SANDSTROM, G

End of Label Matrix	
Mailable recipients	14
Bypassed recipients	1
Total	15